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6 Attorneys for Plaintiffs

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 CALIFORNIA SERVICE EMPLOYEES HEALTH
& WELFARE TRUST FUND, CHRISTOPHER
12 BOUVIER, Trustee, CHARLES GILCHRIST,
Trustee, DAVID HUERTA, Trustee, RAYMOND
13 C. NANN, Trustee, MARK SHARWOOD, Trustee,
14 and LARRY T. SMITH, Trustee,

15 Plaintiffs,

16 vs.

17 BLACKSTONE CONSULTING, INC., a California
18 corporation,

19 Defendant.
20

CASE NO.:

COMPLAINT

21 **PARTIES**

22 1. Plaintiff California Service Employees Health & Welfare Trust Fund (“the Trust”) is a
23 multiemployer joint labor-management welfare fund established pursuant to Section 302(c) of the
24 Labor Management Relations Act (“LMRA”), 29 U.S.C. § 186(c). The Trust maintains an
25 administrative office in San Francisco, California. Its purpose is to provide health and welfare and
26 related benefits to the eligible employees of employers who contribute to the Trust pursuant to
27 various consecutive collective bargaining agreements (“Bargaining Agreements”) between local
28 unions affiliated with the Service Employees International Union (“SEIU”).

COMPLAINT
Case No.

VENUE

7. Venue exists in this Court with respect to the claims under ERISA Section 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Trust is administered in this district.

INTRADISTRICT ASSIGNMENT

8. The basis for assignment of this action to this Court's San Francisco and Oakland Division is that a substantial part of the events and omissions giving rise to Plaintiffs' claims occurred in the City and County of San Francisco, where the Trust is administered.

APPLICABLE LAW

9. Section 515 of ERISA, 29 U.S.C. § 1145, requires that employers who are obligated to make contributions to a multiemployer plan do so in accordance with the terms of the Bargaining Agreement.

10. ERISA Section 502(g)(2), 29 U.S.C. § 1132(g)(2), provides as follows:

In any action under this title by a fiduciary for or on behalf of a plan to enforce Section 515 in which a judgment in favor of the plan is awarded, the court shall award the plan:

- (A) the unpaid contributions,
- (B) interest on the unpaid contributions,
- (C) an amount equal to the greater of:
 - (i) interest on the unpaid contributions, or
 - (ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),
- (D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and
- (E) such other legal or equitable relief as the court deems appropriate.

11. ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a civil action by the Trustees as ERISA fiduciaries:

- (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or
- (B) to obtain other appropriate equitable relief
 - (i) to redress such violations, or
 - (ii) to enforce any provision of this title or the terms of the plan.

12. ERISA Section 209, 29 USC § 1059, recordkeeping and reporting requirements, states in relevant part:

(a)(1) Except as provided by paragraph (2) every employer shall, in accordance with regulations prescribed by the Secretary, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees.

13. The Trustees have a right under ERISA to conduct an audit of a contributing employer's relevant books and records under the terms of the Trust Agreements. *Central States, Southeast and Southwest Areas Pension Fund v Central Transport, Inc.*, 472 US 559 (1985), *reh'g denied* 473 U.S. 926.

FACTS

14. At all times relevant to this Complaint, Defendant was a party and bound by a collective bargaining agreement with Service Employees International Union – United Service Workers West (“the Union”) covering Defendant’s employees (“the Bargaining Agreement”). The Bargaining Agreement required that Defendant contribute to the Trust at specified rates per month on behalf of its eligible employees.

15. As an employer participating in the Trust, and pursuant to the terms of its Bargaining Agreement, Defendant is bound by the Agreement and Declaration of Trust (“Trust Agreement”) establishing the Trust, the terms of the Trust’s Plan Documents, and the rules, regulations and policies adopted by the Trustees under the authority of the Trust Agreement.

16. Defendant’s contractual duty under the Bargaining Agreement requires it to timely make payment in full of the required contributions to the Trust according to its terms or the terms of the Bargaining Agreement, under ERISA Section 515, 29 U.S.C. § 1145.

1 17. At all times relevant to this action, under Article IV, Sections 4 and 5 of the Trust
2 Agreement, and under their Bargaining Agreements, contributing employers were required to
3 submit complete monthly remittance reports of all eligible employees covered by the Bargaining
4 Agreement along with contributions owed, to the Trust on or before the 15th day of each month
5 following the month in which the covered work was performed. Article IV, Section 4 of the Trust
6 Agreement provided that an employer may be compelled by legal proceeding to prepare, submit
7 and file with the Trust proper reports for any period for which the employer failed to file, and that
8 until the proper report is filed by the employer and accepted by the Trust, the amount due from the
9 employer shall be deemed to be not less than the amount due pursuant to the most recent complete
10 report filed by the employer.

11 18. At all times relevant to this action, under Article IV, Sections 5 and 6(a) of the Trust
12 Agreement, contributions received by the Trust after the 20th day of the month following the
13 month in which the covered work was performed were deemed delinquent.

14 19. At all times relevant to this action, in accordance with ERISA Section 502(g)(2)(B),
15 29 U.S.C. § 1132(g)(2)(B), Article IV, Section 6(c) of the Trust Agreement provided that
16 delinquent contributions shall accrue interest at the rate of ten percent (10%) simple interest per
17 annum from the due date until paid.

18 20. At all times relevant to this action, in accordance with ERISA Section 502(g)(2)(C),
19 29 U.S.C. § 1132(g)(2)(C), Article IV, Section 6(b) of the Trust Agreement provided that after the
20 filing of a lawsuit, the employer shall be obligated to pay liquidated damages in an amount equal
21 to the greater of: (1) 20% of the amount of the delinquent contributions, or (2) interest on the
22 delinquent contributions as calculated under Article IV, Section 6(c) of the Trust Agreement.

23 21. At all times relevant to this action, in accordance with ERISA Section 502(g)(2)(D)
24 and (E), 29 U.S.C. § 1132(g)(2)(D) and (E), Article IV, Section 8 of the Trust Agreement
25 provided that in the event of a lawsuit, in addition to the delinquent contributions, interest and
26 liquidated damages due to the Trust, the delinquent contributing employer shall pay to the Trust
27 all attorneys' fees incurred in the litigation and any audit fees incurred in the audit and in
28 connection with the litigation.

22. In or about December 2019, an audit was completed of Defendant's payroll records for the period June 1, 2015 through June 30, 2019, which revealed omissions by Defendant in the payment of contributions due by Defendant to the Trust during the audit period. In or about June 2020, the audit was revised and finalized, resulting in Defendant's owing delinquent contributions to the Trust in the amount of \$15,904.83 in underpayments. Simple interest at 10% per annum on the unpaid contribution amount calculated through September 8, 2020 totals \$3,360.63 and continues to accrue at the rate of \$4.36 per day. Liquidated damages are owed at 20% of the unpaid audit amount totaling at least \$3,180.97, or interest, whichever is greater. Defendant is therefore in breach of the CBA in effect during the above period and thereby breached the terms of the Trust Agreement to which Defendant is bound, and is therefore liable to the Trust for payment of contributions found to be due on audit, interest, an amount equal to the greater of 20% liquidated damages or interest, reasonable attorney's fees and costs, and audit fees.

23. Defendant also underpaid its January 2020 welfare contributions by \$4,777.25 by improperly applying an opt-out credit for an employee for the period August 2019 through December 2018 hours worked.

24. During the period January 2020 to the present, itemized demands have been made upon Defendant for payment of the above-described delinquent contributions, pre-litigation liquidated damages and interest. Despite the demands, Defendant has refused and continues to refuse to pay the amounts owed.

FIRST CAUSE OF ACTION
For Payment of Delinquent Contributions, Interest, Liquidated Damages,
Attorneys' Fees and Costs Against Defendant

25. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 26, above as though fully set forth herein.

26. Defendant as a party to the Bargaining Agreement agreed to be bound by the terms thereof and by the Terms of the Trust Agreement and Plan document.

27. By failing to make the required payments to the Trust, Defendant breached the Bargaining Agreement and Trust Agreements and is in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

1 (b) Interest on all unpaid contributions at the rates set in accordance with the
2 Bargaining Agreement, the Trust Agreement, and ERISA Section 502(g)(2)(B), 29 U.S.C. §
3 1132(g)(2)(B).

4 (c) Liquidated damages in an amount equal to the greater of
5 (i) Interest on the unpaid contributions, or
6 (ii) Liquidated damages provided for under the Bargaining Agreement
7 on the aforementioned unpaid contributions in accordance with the
8 Bargaining Agreement, the Trust Agreement and ERISA Section
9 502(g)(2)(C), 29 U.S.C. § 1132(g)(2)(C).

10 (d) Liquidated damages and interest at the rates set in accordance with the
11 Bargaining Agreement and the Trust Agreement on any contributions paid late to the Trust.

12 (e) Plaintiffs' reasonable attorneys' fees and costs of this action in accordance
13 with ERISA Section 502(g)(2)(D), 29 U.S.C. § 1132(g)(2)(D); reasonable attorneys' fees and
14 costs in accordance with the Trust Agreement and in accordance with LMRA Section 301, 29
15 U.S.C. § 185;

16 2 That the Court retain jurisdiction of this case pending compliance with its orders; and

17 3. For such other and further relief as the Court may deem just and proper.

18 Date: September 8, 2020.

SALTZMAN & JOHNSON LAW CORPORATION

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20 By: /s/
21 Tino X. Do
22 Attorneys for Plaintiffs
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